1521.

SUPREME COURT OF THE UNITED STATES.

No. 147.

JACOB STRADER & AL., TRUSTEES OF COMMERCIAL BANK OF CINCINNATI, PLAINTIFFS IN ERROR,

vs.

HENRY BALDWIN.

IN ERROR TO THE SUPREME COURT OF OHIO.

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J. & G. S. Gideon, printers.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the supreme court of the State of Ohio, within and for the county of Hamilton, greeting:

Whereas, in the record and process, and also in the rendering judgment in a certain action of foreign attachment, in assumpsit, which was in the said court, between Jacob Strader, Robert Buchanan, John McCormick, John R. Coram, Joseph Smith, James Johnson, and George C. Miller, trustees of the Commercial Bank of Cincinnati, plaintiffs, and Henry Baldwin, defendant, manifest error hath intervened, as it is said, to the great damage of the said Jacob Strader, Robert Buchanan, John McCormick, John R. Coram, Joseph Smith, James Johnson, and George C. Miller, trustees as aforesaid, as by their complaint we are informed; and we being willing that the error aforesaid, (if any,) be corrected, and full and speedy justice be done in this behalf to the said parties, command you, that the record, process, and judgment aforesaid, with all things touching the same, under your seals, distinctly and plainly, without delay, you send and certify to the judges of the Supreme Court of the United States, on the first day of the next term of said court, so that the judgment aforesaid being inspected, the court may further, for correcting the error aforesaid, do that which of right and according to law ought to be done.

Witness the honorable Roger B. Taney, chief justice of the United [L. S.] States, this 17th day of August, A. D. 1847, and in the 72d year of the independence of the United States of America.

Attest: WM. MINER, *Clerk.*

I allow a writ of error in this case.

JOHN McLEAN,
Judge Sup. Court U. States.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to Henry Baldwin, greeting:

Whereas Jacob Strader, Robert Buchanan, John McCormick, John R. Coram, Joseph Smith, James Johnson, and George C. Miller, trustees of the Commercial Bank of Cincinnati, have obtained the allowance of our writ of error to the supreme court of the State of Ohio, within and for the county of Hamilton, directed to remove into the Supreme Court of the United States, to be holden at the city of Washington, on the first Monday in the month of December next, the record of a certain plaint, process, proceedings and judgment, in an action of foreign attachment, in assumpsit, wherein you, the said Henry Baldwin, in that action, lately recovered against the said Jacob Strader, Robert

Buchanan, John McCormick, John R. Coram, Joseph Smith, James Johnson, and George C. Miller, a judgment for costs, as by the record in the supreme court aforesaid remaining appears; in which said record and proceedings, and also in the rendition of the judgment thereupon, manifest error hath intervened, as by the said Jacob Strader, Robert Buchanan, John McCormick, John R. Coram, Joseph Smith, James Johnson, and George C. Miller, trustees as aforesaid, we are informed, and our said writ of error granted, issued and allowed, as aforesaid, for the purpose of correcting the errors aforesaid alleged, if any there be.

You are therefore hereby commanded, and cited, to be and appear before the judges of the said Supreme Court, at the city of Washing on, at the next term of said court, to be holden on the first Monday, in the month of December next, to have the errors aforesaid corrected, and the judgment of our said Supreme Court thereupon.

Witness the honorable Roger B. Taney, chief justice of the United States of America, this 17th day of August, A. D. 1847, and
[L. S.] in the 72d year of the independence of the United States of America.

Attest: JOHN McLEAN.

As attorney for Henry Baldwin, I acknowledge service of a copy of this writ, and agree to enter an appearance in the cause in the Supreme Court.

CHARLES FOX,
Attorney for Henry Baldwin.

4th September, 1847.

Pleas before the supreme court of the State of Ohio, within and for the county of Hamilton, at the term of May, in the year of our Lord eighteen hundred and forty-seven.

On error from the superior court of Cincinnati:

JACOB STRADER, Robert Buchanan, John McCormick, John R. Coram, Joseph Smith, James Johnson, and George C. Miller, trustees of the Commercial Bank of Cincinnati,
vs.
HENRY BALDWIN.

Be it remembered, that heretofore, to wit, on the second day of March, A. D. eighteen hundred and forty-seven, Jacob Strader, Robert Buchanan, John McCormick, John R. Coram, Joseph Smith, James Johnson, and George C. Miller, trustees of the Commercial Bank of Cincinnati, filed in the office of the clerk of the supreme court of the State of Ohio, within and for the county of Hamilton, their præcipe for a writ of error, closed in the words and figures following, to wit:

Præcipe for writ of error.

Judgment, superior court of Cincinnati, June term, 1846. In assumpsit for debt. Costs.

JACOB STRADER, Robert Buchanan, John McCormick, John R. Coram, Joseph Smith, James Johnson, and George C. Miller, trustees of the Commercial Bank of Cincinnati,
vs.
HENRY BALDWIN.

Issue writ of error and citation, in the above named cause, returnable on the 7th day of May, 1847—next term.

KING & ANDERSON,
Att'ys for pl'ffs.

27 *Feb'y*, 1847.

To the clerk of the supreme court of Hamilton county, Ohio:

And afterwards, to wit, on the eighteenth day of March, A. D. eighteen hundred and forty-seven, there was issued out of the supreme court aforesaid, within and for the county of Hamilton, a writ of error to the said superior court of Cincinnati, closed in the words and figures following, to wit:

Writ of error.

THE STATE OF OHIO, *Hamilton county, ss:*

To the judge of the superior court of Cincinnati, within and for said county, greeting:

Because in the record and proceedings, and also in the rendition of judgment in a certain action of assumpsit which was lately in our said court before you, wherein Jacob Strader, Robert Buchanan, John McCormick, John R. Coram, Joseph Smith, James Johnson, and George C. Miller, trustees of the Commercial Bank of Cincinnati, were plaintiffs, and Henry Baldwin was defendant, error has intervened, as it is said, to the damage of the said Jacob Strader, Robert Buchanan, John McCormick, John R. Coram, Joseph Smith, James Johnson, and George C. Miller, trustees, &c.; and we being willing that such error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid in that behalf, do command you, that, if judgment be thereupon given, then, without delay, you send to us, distinctly and openly, under the seal of your court, an authenticated transcript of the journal entries and proceedings aforesaid, with the original papers, and all things concerning the same and this writ, so that the same being inspected we may, at the next term of our supreme court, to be holden within and for the said county of Hamilton, cause further to be done thereupon what of right, and according to the laws of the land, ought to be done.

Witness Isaac G. Burnet, clerk of our said supreme court, at Cincinnati, this 18th day of March, A. D. 1847.

ISAAC G. BURNET, *Cl'k.* [L. S.]
By L. F. MOSHER, *Deputy.*

Return.

Which writ was duly returned by the said superior court, with the return endorsed thereon as follows, to wit: An authenticated transcript of the record and proceedings within mentioned, with all things concerning the same, is herewith returned to the said supreme court, in a certain transcript to this writ annexed, as within commanded.

Attest: DAN'L GANO, *Cl'k.*

And afterwards, to wit, on the sixth day of May, A. D. eighteen hundred and forty-seven, the said clerk of the superior court of Cincinnati aforesaid filed in the clerk's office of the supreme court of the State of Ohio, within and for the said county of Hamilton, the original papers, and the transcript of the docket, and journal entries, and proceedings in the above return mentioned; which transcript and papers are closed in the words and figures following, to wit:

Transcript.

Pleas at Cincinnati, in the county of Hamilton, and State of Ohio, before the honorable Charles D. Coffin, judge of the superior court of Cincinnati in and for said county, at the term of June, in the year eighteen hundred and forty-six.

F. attachment in assumpsit. Am't due and sworn to, $10,000.

JACOB STRADER, Robert Buchanan, John McCormick, John R. Coram, Joseph Smith, James Johnson, George C. Miller, trustees of the Commercial Bank of Cincinnati,
vs.
HENRY BALDWIN.
} R. King. J. 36.

Damages, $20,000.00. Suit bro't for money had and received by def't to use of the P. D. & Co. of the Commercial Bank of Cin'ti, for money lent and advanced by said P. D. & Co. to said defendant, at his request, money paid by said P. D. & Co., to use of said def't, at his request, and an account stated between said P. D. & Co. and said defendant.

1844, April 3d, rec'd writ. No goods or chattels, lands or tenements, found.

Served: WALTER GREGORY, *Garnishee.*

1844, July 12. Answer of Walter Gregory, garnishee, filed.

M 101. Def't called—1st default continued.

1844, July 9. Notice of publication issued.

J. 590. 1844, Oct. 5. M 145. Def't called, 2d default, and cont'd.

Nov'r 18. Proof of publication filed.

Dec'r 9. Decl'n filed, R. for P.

Dec'r 17. Office judgment.

1844. July term continued.

1844, Aug. 5. Answer and cross bill of Commercial Bank filed.

M 232. 1844, November 19th. Proof of publication filed and approved.

Præcipe for writ of error.

Judgment, superior court of Cincinnati, June term, 1846. In assumpsit for debt. Costs.

JACOB STRADER, Robert Buchanan, John McCormick, John R. Coram, Joseph Smith, James Johnson, and George C. Miller, trustees of the Commercial Bank of Cincinnati,
vs.
HENRY BALDWIN.

Issue writ of error and citation, in the above named cause, returnable on the 7th day of May, 1847—next term.

KING & ANDERSON,
Att'ys for pl'ffs.

27 *Feb'y*, 1847.

To the clerk of the supreme court of Hamilton county, Ohio:

And afterwards, to wit, on the eighteenth day of March, A. D. eighteen hundred and forty-seven, there was issued out of the supreme court aforesaid, within and for the county of Hamilton, a writ of error to the said superior court of Cincinnati, closed in the words and figures following, to wit:

Writ of error.

THE STATE OF OHIO, *Hamilton county, ss:*

To the judge of the superior court of Cincinnati, within and for said county, greeting:

Because in the record and proceedings, and also in the rendition of judgment in a certain action of assumpsit which was lately in our said court before you, wherein Jacob Strader, Robert Buchanan, John McCormick, John R. Coram, Joseph Smith, James Johnson, and George C. Miller, trustees of the Commercial Bank of Cincinnati, were plaintiffs, and Henry Baldwin was defendant, error has intervened, as it is said, to the damage of the said Jacob Strader, Robert Buchanan, John McCormick, John R. Coram, Joseph Smith, James Johnson, and George C. Miller, trustees, &c.; and we being willing that such error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid in that behalf, do command you, that, if judgment be thereupon given, then, without delay, you send to us, distinctly and openly, under the seal of your court, an authenticated transcript of the journal entries and proceedings aforesaid, with the original papers, and all things concerning the same and this writ, so that the same being inspected we may, at the next term of our supreme court, to be holden within and for the said county of Hamilton, cause further to be done thereupon what of right, and according to the laws of the land, ought to be done.

Witness Isaac G. Burnet, clerk of our said supreme court, at Cincinnati, this 18th day of March, A. D. 1847.

ISAAC G. BURNET, *Cl'k.* [L. S.]
By L. F. MOSHER, *Deputy.*

Return.

Which writ was duly returned by the said superior court, with the return endorsed thereon as follows, to wit: An authenticated transcript of the record and proceedings within mentioned, with all things concerning the same, is herewith returned to the said supreme court, in a certain transcript to this writ annexed, as within commanded.

Attest: DAN'L GANO, *Cl'k.*

And afterwards, to wit, on the sixth day of May, A. D. eighteen hundred and forty-seven, the said clerk of the superior court of Cincinnati aforesaid filed in the clerk's office of the supreme court of the State of Ohio, within and for the said county of Hamilton, the original papers, and the transcript of the docket, and journal entries, and proceedings in the above return mentioned; which transcript and papers are closed in the words and figures following, to wit:

Transcript.

Pleas at Cincinnati, in the county of Hamilton, and State of Ohio, before the honorable Charles D. Coffin, judge of the superior court of Cincinnati in and for said county, at the term of June, in the year eighteen hundred and forty-six.

F. attachment in assumpsit. Am't due and sworn to, $10,000.

JACOB STRADER, Robert Buchanan, John McCormick, John R. Coram, Joseph Smith, James Johnson, George C. Miller, trustees of the Commercial Bank of Cincinnati,
vs.
HENRY BALDWIN.
} R. King. J. 36.

Damages, $20,000.00. Suit bro't for money had and received by def't to use of the P. D. & Co. of the Commercial Bank of Cin'ti, for money lent and advanced by said P. D. & Co. to said defendant, at his request, money paid by said P. D. & Co., to use of said def't, at his request, and an account stated between said P. D. & Co. and said defendant.

1844, April 3d, rec'd writ. No goods or chattels, lands or tenements, found.

Served: WALTER GREGORY, *Garnishee.*

1844, July 12. Answer of Walter Gregory, garnishee, filed.
M 101. Def't called—1st default continued.
1844, July 9. Notice of publication issued.
J. 590. 1844, Oct. 5. M 145. Def't called, 2d default, and cont'd.
Nov'r 18. Proof of publication filed.
Dec'r 9. Decl'n filed, R. for P.
Dec'r 17. Office judgment.
1844. July term continued.
1844, Aug. 5. Answer and cross bill of Commercial Bank filed.
M 232. 1844, November 19th. Proof of publication filed and approved.

1844. October term continued.
Mo. to set aside judgment, and for leave to plead.
1845, Jan'y 10th. Plea filed. Mo. granted, and plea rec'd.
1845, Jan'y 16th. Replication filed. Rule for rejoinder.
1845, Jan'y 22d. Demurrer to pl'ffs' replication filed.
M 383. Bill of exceptions to opinion of the court setting judgment aside, &c., signed, filed, and ordered to be made a part of the records.
1845. Jan'y term continued.
M 493. Demurrer overruled, &c. Leave to parties, pl'ffs and def't, to amend pleadings.
1845. June term continued.
1845, Aug. 5. Plea of def't filed. 1845, September 2d. Demurrer to replication filed.
1845, Oct. 10. Demurrer to pl'ffs' 1st replication of 2d plea filed. Submitted on demurrer; and 2d plea and joinder filed.
1845, Oct. 9. Joinder in demurrer filed. S. on 1st plea.
Demurrer to plea sustained.
M 589. Plea and replication overruled, and leave to amend said replication—Oct. 29, 1846—as well as the replication secondly filed to amend pleas.
Replication to amended pleas filed.
1845, Nov'r 6. Demurrer to plaintiffs' replication filed.
1845. October term continued.
1846. January term continued.
M 250. Defendant's demurrer to pl'ffs' replication, filed 29th Oct., sustained, and pleas sufficient to bar, &c. Judg't for def't.

Judgment superior court.

And now here, to wit, at the term of June, in the year eighteen hundred and forty-six, came the parties, by their attorneys, into court; and the court, after hearing arguments of counsel, and mature deliberation had therein, do order and adjudge, that the defendant's demurrer to the plaintiffs' replication, filed 29th October, 1845, be sustained, and that the said pleas filed by the said defendant are sufficient in law to bar and preclude the plaintiffs from having and maintaining their aforesaid action thereof against the defendant. It is therefore considered and adjudged by the court that the plaintiffs take nothing by his writ and declaration, and that the defendant recover of the plaintiffs his costs, &c.
M 383. Bill of exceptions signed, filed, and ordered to be recorded, March 3d, 1845.

P. costs - - - - - -	$24 50
D. costs - - - - - -	9 47
Costs - - - -	$33 97
Transcript—not paid - - - -	1 75

Clerk's certificate to transcript and proceedings.

THE STATE OF OHIO, *Hamilton county, ss:*

I, Daniel Gano, clerk of the superior court of Cincinnati, in and for said county, do hereby certify, that the above and foregoing is a true transcript of the docket, journal, and final entries of judgment in the above named case.

In witness whereof I have hereunto set my hand and affixed the seal of our said court, at Cincinnati, this 3d day of May, A. D. 1847. DANIEL GANO, *Clerk.*

[L. S.]

And heretofore, to wit, on the third day of April, eighteen hundred and forty-four, the following affidavit was filed in the superior court aforesaid, and thereupon there was issued out of the said superior court of Cincinnati, a writ of attachment, closed in the words and figures following, to wit:

Writ of attachment.

THE STATE OF OHIO, *Hamilton county, ss:*

Rufus King, of lawful age, being first duly sworn, makes oath in writing, and says that he is the attorney of the trustees above named of the Commercial Bank of Cincinnati; that Henry Baldwin, above named, is debtor to the said trustees in the sum of ten thousand dollars and upwards, that the said debtor is not a resident of the State of Ohio, as this affiant verily believes, and that he has good reason to and does believe, that Walter Gregory of Cincinnati, has property, moneys, and credits in his possession, belonging to and due from him to said Henry Baldwin. RUFUS KING.

Sworn to and subscribed before me, this 3d day of April 1844.
DANL. GANO, *Clerk,*
By G. H. HILTON, *Dep'y.*

A true copy.
Attest: D. GANO, *clerk.*
By G. H. HILTON, *Dep'y.*

Writ of attachment.

THE STATE OF OHIO, *Hamilton county, ss:*

To John H. Gerard, esq., sheriff of our said county, greeting:

Whereas Rufus King, attorney of Jacob Strader, Robert Buchanan, John McCormick, John R. Coram, Joseph Smith, James Johnson, and George C. Miller, trustees of the Commercial Bank of Cincinnati, has sufficiently testified to the superior court of Cincinnati, in and for said county, that Henry Baldwin is not a resident of the State of Ohio, and is justly indebted to the said Jacob Strader, Robert Buchanan, John McCormick, John R. Coram, Joseph Smith, James Johnson, and George C. Miller, trustees of the Commercial Bank of Cincinnati, in the sum of ten thousand dollars, in a certain action of assumpsit to the damage of the said plaintiffs twenty thousand dollars. We therefore

command you to attach, all and singular, the lands, tenements, goods, chattels, rights, credits, moneys, and effects of the said debtor, wheresoever they may be found in your bailiwick, and the same safely keep, and have ready at all times to be disposed of, or so provide that the same, or the value thereof, may be forthcoming, as you may hereafter be directed, when the further order of the court aforesaid, in the premises, is made known according to law, and hereof in no wise fail; and of this writ, together with your proceedings hereon, make due return to the said court, on the 2d Monday of July next, at Cincinnati, in said county.

In witness of which I have hereunto set my hand and the seal of said court, at Cincinnati, this 3d day of April, A. D. 1844.

[L. S.]

DANL. GANO,
Clerk superior court of Cincinnati.

On which was the following endorsement.

Endorsement.

F. attachment in assumpsit. Amt. due and sworn to $10,000 00. Damages $20,000 00. Suit brot. for money had and received by deft. to the use of P. D. & Co. of the Commercial Bank of Cincinnati, for money lent and advanced by said P. D. & Co. to said defendant at his request, money paid by said P. D. & Co. to use of said deft. at his request, and on account stated between said P. D. & Co. and said defendant.

To July term, 1844.

Which writ was duly returned to the said superior court of Cincinnati, by the said sheriff, with his return thereon as follows, to wit:

Sheriff's return.

1844, April 3d, 1844, no goods or chattels, lands or tenements, found to attach, belonging to defendant, and have served personally, by copy of this writ and affidavit, with notice to appear at court at the return day of this writ, and answer as garnishee according to law, in the within case, upon Walter Gregory.

J. H. GERRARD, *Sheriff.*

And afterwards, to wit, on the 12th day of July, A. D. 1844, the said Walter Gregory, garnishee, filed in the said superior court of Cincinnati, his answer, closed in the words and figures following, to wit:

Answer of garnishee.

Superior court of Cincinnati. Foreign attachment in assumpsit.

JACOB STRADER, ROBERT BUCHANAN, John McCormick, John R. Coram, Joseph Smith, James Johnson and George C. Miller, trustees of the Commercial Bank of Cincinnati,

vs.

HENRY BALDWIN.

Walter Gregory, served with process as garnishee in the said suit, being first duly sworn to answer the questions put to him, touching the property and credits of the defendant in his possession, answers and says:

To interrogatory first. State whether you have been served with process in this suit.

Answer. I have been, as garnishee of Henry Baldwin.

Interrrogatory second. State whether there is in your possession, or within your knowledge, any property belonging to said Baldwin, or any moneys or credits due from you to said defendant Baldwin?

Answer There are moneys due from me to the said Henry Baldwin.

Interrogatory third. State how due, the nature and amount of the debt or liability, and when payable.

Answer. I am liable to said Baldwin for the balance of a prize ticket sold by my agent at St. Louis, Missouri, to said Baldwin, in class No. 16, of the Missouri lottery, for the benefit of the St. Louis Hospital, for the amount of $8,000 00, subject to a deduction of 15 per cent., making the amount payable on the prize $6,800, due 40 days after the drawing, viz., on 27th February last; of which amount $2,086 00 was paid by my agent on the 27th February last, $500 00 by the same on March 27th last, and $65 00 by the same on 9th April, before notice had reached him of the service of process on me in this city. The balance due, therefore, on the prize, is $4,149, payable on demand, which amount I withhold only because under process of garnishment in this suit, and am prepared to pay as this court shall determine. Said Baldwin, I believe, still holds the said ticket, and the amounts paid are endorsed upon it. I am sole owner and proprietor of his lottery.

WALTER GREGORY.

Sworn and subscribed before me, this 12th day of July, 1844, in open court.

DANL. GANO, *Clerk.*

And afterwards, to wit, on the eighteenth day of November, A. D. 1844, proof of publication was filed in the said superior court of Cincinnati, closed in the words and figures following, to wit:

Publication.

STATE OF OHIO,
Hamilton county, sct:

Superior court of Cincinnati. Foreign attachment in assumpsit.

JACOB STRADER, ROBERT BUCHANAN, John McCormick, John R. Coram, Joseph Smith, James Johnson, and George C. Miller, trustees of the Commercial Bank of Cincinnati,
vs.
HENRY BALDWIN.

All persons interested will take notice, that the plaintiffs above nam-

ed, on the 3d of April, A. D. 1844, sued out a writ of attachment from the superior court of Cincinnati, in the county of Hamilton, and State of Ohio, against Henry Baldwin, a non resident of the State of Ohio, for the sum of $10,000, returnable to the July term, 1844, which writ has been returned, served upon Walter Gregory, garnishee.

DANL. GANO, *Clerk.*
RUFUS KING,
Attorney for plaintiffs.

Proof of publication.

STATE OF OHIO,
Hamilton county:

Geo. W. Harlan, one of the proprietors of the Cincinnati Chronicle, a newspaper printed in the county of Hamilton, State of Ohio, and there in general circulation, being duly affirmed, says: The advertisement hereto annexed was published three consecutive weeks in said newspaper, next preceding the twenty-ninth day of July, 1844.

GEO. W. HARLAN.

Charges - - - - -	$2 00
Aff. - - - - - -	25
	2 25

Affirmed to and subscribed before me, this 16 November, 1844.
R. A. MADISON, *J. P.*

And afterwards, to wit, on the ninth day of December, A. D. 1844, the said Jacob Strader, Robert Buchanan, John McCormick, John R. Coram, Joseph Smith, James Johnson, and Geo. C. Miller, trustees of the Commercial Bank of Cincinnati, filed in the superior court of Cincinnati aforesaid, their narration in assumpsit, closed in the words and figures following, to wit:

Declaration of plaintiffs.

THE STATE OF OHIO,
Hamilton county, sct:

SUPERIOR COURT OF CINCINNATI, *October term*, 1844.

Henry Baldwin, defendant, attached and summoned by publication to answer unto Jacob Strader, Robert Buchanan, John McCormick, John R. Coram, Joseph Smith, James Johnson, and George C. Miller, trustees of the Commercial Bank of Cincinnati, plaintiffs in a plea of assumpsit. And thereupon, the said plaintiffs complain of the said defendant, for that whereas, heretofore, to wit, on the first day of July, in the year of [our] Lord one thousand eight hundred and forty-three, to wit, at the county of Hamilton aforesaid, the said defendant was indebted to the president, directors, and company of the Commercial Bank of Cincinnati, in the sum of fifteen thousand dollars, for so much money then and there had and received, to and for their use by the said defendant; and in the further sum of fifteen thousand dollars, for so

much money, by the said president, directors, and company, then and there lent and advanced to the said defendant, at his special request. And in the further sum of fifteen thousand dollars, for so much money then and there paid, laid out, and expended, by the said president, directors, and company, to and for the use of the said defendant, at his request. And in the further sum of fifteen thousand dollars, for so much money then and there found to be due to the said president, directors, and company, from said defendant on an account then and there mutually stated, by and between the said defendant, and the said president, directors, and company. And afterwards, to wit, on and with the thirty-first day of December, of the said year 1843, the said corporation of the president, directors, and company of the Commercial Bank of Cincinnati became and was dissolved by the expiration of the term of its charter, and the said plaintiffs then and there were the directors of the said corporation, acting last before and at the time of the said dissolution thereof, and thereby then and there became, and are by virtue of the statute in that case made and provided, trustees of the said corporation of the Commercial Bank of Cincinnati, no other person or persons having been appointed by the Legislature, or by any court of competent authority; and thereby then and there became, and are authorized and entitled to sue for and collect the debts and property of the said corporation. And the said defendant afterwards, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and forty-four, to wit, at the county of Hamilton aforesaid, in consideration of the premises, undertook and promised the said plaintiffs to pay them the said several sums of money when thereunto requested. Yet the said defendant hath not paid the said plaintiffs the said several sums of money, or either of them, or any part thereof, though often requested; but so to do wholly refuses, to the damage of the said plaintiffs twenty thousand dollars, and therefore they sue, by

RUFUS KING,
Atty. for plaintiffs.

Proof of publication.

And afterwards, to wit, on the tenth day of January, A. D. 1845, further proof of publication was filed in the said superior court of Cincinnati, closed in the words and figures following, to wit:

STATE OF OHIO,
Hamilton county, sct:

Superior court of Cincinnati. Foreign attachment in assumpsit.

JACOB STRADER, ROBERT BUCHANAN, John McCormick, John R. Coram, Joseph Smith, James Johnson, and George C. Miller, trustees of the Commercial Bank of Cincinnati,
vs.
HENRY BALDWIN.

All persons interested will take notice, that the plaintiffs above named, on the 3d day of April, A. D. 1844, sued out a writ of attachment from the superior court of Cincinnati, in the county of Hamilton, and State of Ohio, against Henry Baldwin, a non-resident of the State of Ohio, for the sum of $10,000, returnable to the July term, 1844; which writ has been returned, served upon Walter Gregory, garnishee.

DAN'L GANO, *Clerk.*

RUFUS KING,
Atty. for Pl'ffs.

STATE OF OHIO, *Hamilton county:*

George W. Harlan, one of the proprietors of the Cincinnati Chronicle, a newspaper printed in the county of Hamilton, State of Ohio, and then in general circulation, being duly affirmed, says, the advertisement hereto annexed was published six successive weeks, in said newspaper, next preceding the twenty-sixth day of August, 1844.

GEO. W. HARLAN.

Charge, - - - -	$2 00
Aff., - - - -	25
	$2 25

Affirmed to and subscribed to before me, this 8th day of January, 1845. R. A. MADISON, *J. P.*

And afterwards, to wit, on the same day, to wit, on the tenth day of January, A. D. 1845, the said Henry Baldwin filed, in the superior court of Cincinnati aforesaid, his plea in the words and figures following, to wit:

Defendant's plea.

Superior court of Cincinnati.

JACOB STRADER, Robert Buchanan, John McCormick, John R. Coram, Joseph Smith, James Johnson, and George C. Miller, vs. HENRY BALDWIN.

And the said Henry Baldwin, by Fox and Lincoln, his attorneys, comes and defends the wrong and injury, whence, and for plea says, he did not undertake and promise in manner and form as the plaintiffs, in declaring, have alleged; and this he prays may be inquired of by the country, and the plaintiffs do the like. And for further plea in this behalf, by leave of the court first had and obtained, he says, the plaintiffs their action aforesaid ought not to have or maintain, because he says that he, said defendant, before and on the 18th day of July, in the year eighteen hundred and forty-two, and from thence continually until the rendering the decree of bankruptcy hereinafter mentioned, was a resident and citizen of the State and district of Missouri; and that, on the said eighteenth day of July, in the year eighteen hun-

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dred and forty-two, he filed his petition in the district court of the United States, for the district of Missouri, praying to be declared a bankrupt, and to be discharged from his debts, in pursuance of the act of Congress entitled "an act to establish an uniform system of bankruptcy throughout the United States," which said court has jurisdiction of the matters set forth in said petition; and such proceedings were had in said court upon said petition to be declared a bankrupt, that afterwards, it having been shown to said court that the said Henry Baldwin had conformed in all respects to the rules and orders of the said district court, and the said act of Congress, the said petition came on to be heard before said court on the fifth day of September, in the year eighteen hundred forty-three; and no cause having been shown to the court why the prayer of the said petition should not be granted, it was then and there ordered, adjudged, and decreed by the said court, that the said Henry Baldwin be discharged from all his debts owing by him at the time of the filing of said petition, and that a certificate thereof be granted to said Henry Baldwin, in pursuance of the said act of Congress in such cases made and provided; which was done, as will more fully appear by the record of said proceedings, and by the certificate of discharge granted him under the seal of said court; which latter is ready to be produced by the defendant. And the said defendant avers, that the said supposed causes of action set forth in the plaintiffs' declaration accrued, and each and every of them accrued, to said plaintiffs, and to those under and through whom said plaintiffs claim, before he, the defendant, petitioned for and was decreed to be a bankrupt as aforesaid. Said defendant further avers, that the several causes of action in the declaration set forth are not founded upon any debt created or owing by defendant, in consequence of any defalcation as a public officer, or as executor, or administrator, or trustee, or while acting in any other fiduciary capacity; and this he is ready to verify. Wherefore, he prays judgment if the said plaintiffs their aforesaid action ought to have or maintain. FOX & LINCOLN, *Attys.*

And afterwards, to wit, on the sixteenth day of January, A. D. 1845, the said Jacob Strader, Robert Buchanan, John McCormick, John R. Coram, James Johnson, Joseph Smith, and George C. Miller, trustees of the Commercial Bank of Cincinnati aforesaid, filed their replication, closed in the words and figures following, to wit:

Replication.

Superior court of Cincinnati, January term, 1845.—In assumpsit.

JACOB STRADER, Robert Buchanan, John McCormick, John R. Coram, James Johnson, Joseph Smith, and George C. Miller, trustees of the Commercial Bank of Cincinnati,

vs.

HENRY BALDWIN, defendant.

And the said plaintiffs, as to the said plea of the said defendant severally above pleaded to their said declaration, say that they ought not, by reason of any thing by said defendant in that plea alleged, to be barred from having and maintaining their aforesaid action thereof, because they say, that the said several causes of action in their said declaration by them set forth, are founded upon debts created and owing by him, the said defendant, in consequence of a defalcation as trustee, and while acting in a fiduciary capacity, to wit, while acting as individual book-keeper for the president, directors, and company of the Commercial Bank of Cincinnati, under and through whom these plaintiffs claim, as in their declaration set forth. And this the said plaintiffs pray may be inquired of by the country.

By R. KING, *Atty. for Pl'ffs.*

And afterwards, to wit, on the twenty-second day of January, 1845, the said Henry Baldwin aforesaid filed in the superior court of Cincinnati his demurrer to plaintiffs' replication, closed in the words and figures following, to wit:

Demurrer to plaintiffs' replication.

HENRY BALDWIN
ads.
JACOB STRADER et als.

Superior court.

And the said defendant comes, and, for rejoinder to the plaintiffs' said replication to the second plea above pleaded by the defendant, says, that the matters and things set forth in said replication, in manner and form as the same are above pleaded, are not sufficient in law to enable the said plaintiffs to sustain their aforesaid action against him, and the defendant doth therefore demur to the said replication. And for cause of demurrer said defendant shows, that the said replication is double, in this, that the said replication alleges that said debts in the declaration mentioned are formed upon debts created and owing by the defendant as trustee, and also while acting in a fiduciary capacity, to wit, while acting as individual book-keeper for the president, directors, and company of the Commercial Bank of Cincinnati, under and through whom plaintiffs claim; also, because said replication sets forth that said debts were created and owing by defendant while acting in a fiduciary capacity, without setting forth any facts showing that the defendant was in fact, at the time of incurring said debts, acting in a fiduciary capacity; also, because the said plaintiff has, in his replication, set forth new facts, not alleged or set forth in the previous pleadings, viz., that said debts named in plaintiffs' declaration were created while the defendant was acting as individual book-keeper for the president, directors, and company of the Commercial Bank of Cincinnati; and yet has concluded to the country, and not with a verification.

FOX & LINCOLN,
Attys. for Def't.

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And afterwards, to wit, on the 3d day of March, A. D. 1845, the said Jacob Strader, Robert Buchanan, John McCormick, John R. Coram, Joseph Smith, James Johnson, and George C. Miller, trustees of the Commercial Bank of Cincinnati aforesaid, filed, in the superior court of Cincinnati aforesaid, their bill of exceptions, closed in the words and figures following, to wit:

Bill of exceptions.

STATE OF OHIO, *Hamilton county:*

Superior court of Cincinnati, January term, 1845.

JACOB STRADER, Robert Buchanan, John McCormick, John R. Coram, Joseph Smith, James Johnson, and George C. Miller, trustees of the Commercial Bank of Cincinnati,
vs.
HENRY BALDWIN.

Bill of exceptions.

Be it remembered, that on the 6th day of January, A. D. 1845, being the first day of January term, 1845, of this court, came the said plaintiffs, by their attorney, and said defendant being called in open court this third time, and coming not, said plaintiffs had judgment against said Henry Baldwin, defendant, for the sum of $10,193 43 damages, besides costs. And thereupon, on the 10th day of January, A. D. 1845, said defendant, by his attorneys, Fox and Lincoln, moved the court to set aside said judgment as irregular, and allow said defendant leave to plead, upon the ground that said defendant had not been in default; to which motion said plaintiffs objected, and showed to the court the following facts: That said defendant was present, and cross examined at the taking of depositions in this suit, in the month of July, A. D. 1844; and that, by his attorneys aforesaid, he took from the clerk's office of this court, before this January term, A. D. 1845, a copy of the plaintiffs' declaration. That said declaration was filed at the October term, A. D. 1844, and rule for plea entered, and office judgment, under rule 7th, (which copy,) taken by plaintiffs, for want of plea, on the 17th day of December, 1844, against defendant. That on the first day of this January term, 1845, being the third term after the issuing of the writ of attachment in this suit, the defendant was solemnly called the third time in open court, and came not; whereupon the said office judgment was then and there confirmed by the court, and judgment allowed said plaintiffs against defendant for $10,193 43, besides costs, but judgment was not entered on the journals when the motion was made to plead. That the defendant makes no showing, by his motion or otherwise, as required by rule 8th of this court, herein set forth, that he has a meritorious defence, but seeks, by way of defence, to set up the general issue, with a special plea of his discharge as a bankrupt. (Copy of rule 8th.)

It appeared by the affidavit, (A,) filed 18th November, 1844, of publication of pendency of this suit, that the same was advertised three weeks only, although the same was in fact regularly published six weeks successively before the 26th August, 1844, and affidavit thereof (B) was filed on the 8th of January, 1845, before the motion.

Which objection of plaintiffs was overruled by the court, judgment set aside, and defendant allowed to file a plea of the general issue, and also of his discharge under the Bankrupt law. To which opinion and ruling of the court the said plaintiffs excepted, and in that behalf prayed that their bill of exceptions might be allowed, which is accordingly done; and upon their motion the same is ordered to be entered, and made a part of the record in this case.

D. K. ESTE, [SEAL.]
Judge of Superior Court.

And afterwards, to wit, on the fifth day of August, A. D. 1845, the said Henry Baldwin, by Fox & Lincoln, his attorneys, filed, in the office of the clerk of the superior court of Cincinnati aforesaid, his further plea, closed in the words and figures following, to wit:

Defendant's further plea.

HENRY BALDWIN ads. JACOB STRADER et als.

Superior court of Cincinnati.

And the said defendant, by leave, &c., first had, &c., for further plea in this behalf, says, the said plaintiffs their aforesaid action ought not to have and sustain, because, he says, that heretofore, to wit, on the eighteenth day of July, in the year eighteen hundred and forty-two, he, the defendant, resided within the State and district of Missouri, to wit, at the city of Saint Louis, in said district, and was then and there owing debts which had not been created in consequence of defalcation as a public officer, or as executor, administrator, guardian, or trustee, or while acting in any other fiduciary capacity, and was then and there a bankrupt, within the meaning of the act of Congress entitled "An act to establish an uniform system of bankruptcy throughout the United States."

And the defendant further says, that afterwards, to wit, on the day and year aforesaid, at the district aforesaid, he then being such bankrupt, did present his petition to the United States district court for the Missouri district, which petition set forth, among other things, that he owed debts which had not been created in consequence of a defalcation as a public officer, or as executor, administrator, guardian, or trustee, or while acting in any other fiduciary capacity. A list of his creditors, their respective places of residence, and the amounts due to each, was also filed, together with an inventory of his property, rights, credit, and effects, which were attached to and made part of said petition; also setting forth that he was unable to meet his debts and engagements, and pray-

ing the court to be allowed the benefit of the act of Congress, entitled an act to establish an independent system of Bankruptcy throughout the United States, and which was verified by the oath of said defendant. That such proceedings were had in said court, on the petition aforesaid, that afterwards, at the December term of said court, in the year eighteen h[undred] and forty-two, it was ordered, and adjudged, and decreed, by said court, that said defendant, Henry Baldwin, be declared a bankrupt. And afterwards such further proceedings were had in said cause, before said district court, that, at the September term of said district court of the United States in and for said Missouri district, in the year 1843, the said cause came on to be heard before said court, and it was declared by said court that it then and there appearing to the court that said petitioner had fully complied with the rules and orders of the court and the act of Congress in such cases made and provided, it was by said court ordered, adjudged, and decreed that said Henry Baldwin, the now defendant, be, and he was thereby, discharged from all his debts owing by him at the time of filing his petition of bankruptcy; and it was further ordered by the court, that a certificate thereof be delivered to said petitioner, which decree of discharge is still remaining in full force and unreversed in said court; of which discharge the following is a true copy, certified by the clerk of said court under the seal thereof, that is to say:

"In bankruptcy, September term, A. D. 1843, in the matter of Henry Baldwin, petitioner in bankruptcy.

"Whereas, on the eighteenth day of July, in the year *eghteen* hundred and forty-two, Henry Baldwin filed his petition in the district court of the United States for the district of Missouri, to be declared bankrupt and discharged from his debts, in pursuance of the act of Congress entitled 'An act to establish a uniform system of bankruptcy throughout the United States,' approved August 19th, 1841:

"And whereas it having been shown that the said Henry Baldwin conformed in all respects to the rules and orders of the said district court and the said act of Congress:

"And whereas, on the 5th day of September, in the year eighteen hundred and forty-three, the said petition came on to be heard, and no cause having been shown to the court why the prayer of the said petition should not be granted:

"It was ordered, adjudged, and decreed, by the said court, that the said Henry Baldwin be discharged from all his debts owing by him at the time of filing of said petition; and that a certificate thereof be granted and delivered to said Henry Baldwin, in pursuance of said act of Congress in such cases made and provided, which is done accordingly.

"In testimony whereof, I, Jason Harrison, clerk of the said district court, have hereunto set my hand and affixed the seal of the said court.

"Done at the city of Jefferson, this 15th day of September, 1843.

"JASON HARRISON, *Clerk.*"

And the said defendant avers, that the promises upon which this suit is brought arose and existed at and before the time of the said defendant's filing his aforesaid petition for the benefit of said Bankrupt act, and were proveable as a debt under said bankrupt proceedings. The defendant further avers, the said debt due, or claimed to be due, by defendant to said plaintiff, was not contracted or owing by said defendant in consequence of a defalcation as a public officer, or executor, administrator, guardian, or trustee, or while acting in any other fiduciary capacity; and he further avers, that said certificate is a full and complete discharge of him, the said defendant, for or on account of the said premises in said declaration set forth; and this he is ready to verify. Wherefore he prays judgment *of* the plaintiff ought to have or maintain their aforesaid action thereof against him.

And for further plea in this behalf, by leave of the court first had and obtained, the said defendant says, the said plaintiff his action aforesaid ought not to have and maintain, because he says that heretofore, to wit, on the eighteenth day of July, in the year eighteen hundred and forty-two, he, the said defendant, being then a resident of the State and district of Missouri, presented his petition to the United States district court for the Missouri district, setting forth that he was a resident of the district of Missouri; that he was owing debts which had not been created in consequence of a defalcation as a public officer, or as executor, administrator, guardian, or trustee, or while acting in any other fiduciary capacity; and was a bankrupt and unable to meet his debts and engagements, and attaching thereto a list of his creditors and their places of residence, and also an inventory of his property, rights, credits, and effects, and praying to be allowed the benefit of the act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States;" and such proceedings were afterwards had in said cause in said court, that afterwards, in the said district court of the United States, in said Missouri district, at the September term of said court, in the year 1843, the said petition came up to be heard; at which term the said court found that this defendant had fully complied with the rules and orders of said court and the act of Congress in such case made and provided; and also ordered, adjudged, and decreed that this defendant be, and he was thereby, discharged from all his debts owing by him at the time of filing his said petition in bankruptcy; and it was further ordered by said court that a certificate thereof be delivered to this defendant, which certificate was afterwards, on the 15th day of September, in the year 1843, signed by the clerk of said court, and sealed with the seal of said court, duly delivered to this defendant, and now ready to be shown to the court; and of which certificate of discharge the following is a true copy. (B.)

And the said defendant avers, that the said several causes of action, and the promises set forth in the plaintiffs' declaration, and the debts due, or claimed therein to be due, by this defendant to said plaintiffs, did accrue, and were made, and said debts were due and owing by said defendant to the said plaintiffs, or to those under whom they claim, at and before the time of filing said petition for the benefit of said Bankrupt act, and

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were proveable as debts under said bankrupt proceedings; and the defendant further avers, that the said debts, severally set forth in the plaintiffs' declaration, were not contracted or owing by the said defendant to said President, Directors, and Company of the Commercial Bank of Cincinnati, in consequence of a defalcation as a public officer, or executor, administrator, guardian, or trustee, or while acting in any other fiduciary capacity.

And the said defendant further avers, that the said certificate of discharge is a full and complete discharge of him, the said defendant, of, for, and from the said several premises set forth in the plaintiffs' declaration, and this he is ready to verify. Wherefore, he prays judgment if the said plaintiffs their aforesaid action ought to have or maintain against him.

FOX & LINCOLN, *Att'ys.*

B.

Certificate of discharge.

District court of the United States for the district of Missouri.

No. 735.

In bankruptcy, September term, 1843, in the matter of Henry Baldwin. Petition in bankruptcy.

Whereas, on the eighteenth day of July, in the year eighteen hundred and forty-two, Henry Baldwin filed his petition in the district court of the United States for the district of Missouri, to be declared a bankrupt and discharged from his debts, in pursuance of the act of Congress entitled "An act to establish an uniform system of bankruptcy throughout the United States," approved August 19th, 1841:

And whereas it having been shown that the said Henry Baldwin conformed in all respects to the rules and orders of the said district court and the said act of Congress:

And whereas, on the 5th day of September, in the year eighteen hundred and forty-three, the said petition came on to be heard, and no cause having been shown to the court why the prayer of the said petition should not be granted:

It was ordered, adjudged, and decreed, by the said court, that the said Henry Baldwin be discharged from all his debts owing by him at the time of the filing of said petition, and that a certificate thereof be granted and delivered to said Henry Baldwin, in pursuance of the said act of Congress in such cases made and provided, which is done accordingly.

In testimony whereof, I, Jason Harrison, clerk of the said district court, have hereunto set my hand, and affixed the seal of the said court.

Done at the city of Jefferson, this 18th day of September, 1843.

JASON HARRISON, *Clerk.*

Replication to defendant's amended plea and demurrer to 2d amended plea.

And afterwards, to wit, on the second day of September, A. D. 1845, the aforesaid plaintiffs, Jacob Strader and others, trustees of the Commercial Bank of Cincinnati, filed in the superior court of Cincinnati aforesaid their replication to defendant's amended plea and demurrer to 2d amended plea, closed in the words and figures following, to wit:

Superior court of Cincinnati. In assumpsit.

JACOB STRADER and others, trustees of the Commercial Bank of Cincinnati,
vs.
HENRY BALDWIN.

And the said plaintiffs come, and, as to the amended plea by said defendant first above pleaded to their said declaration, for replication thereunto say, that they ought not, by reason of any thing by said defendant therein alleged, to be barred from having and maintaining their aforesaid action thereof, because they say that the said debt, in their declaration and in the said plea set forth and referred to, was contracted by the said defendant in consequence of a defalcation while acting in a fiduciary capacity under and with respect to the President, Directors, and Company of the Commercial Bank of Cincinnati, of whom they, the said plaintiffs, are the trustees and lawful successors, as in their said declaration set forth; and this they pray may be inquired of by the country. (And the defendant doth the like.)

And the said plaintiffs come, and by leave of court first had, &c., for a further replication to the amended plea by said defendant first above pleaded, say, that they ought not, by reason of any thing by said defendant therein alleged, to be barred from having and maintaining their action aforesaid, because they say that the said debt, in their declaration and in the said plea set forth and referred to, was contracted by the said defendant while acting in a fiduciary capacity under and with respect to the President, Directors, and Company of the Commercial Bank of Cincinnati, of whom they, the said plaintiffs, are the trustees and lawful successors, as in their said declaration set forth; and this they pray may be inquired of by the country; and the defendant doth the like.

And the said plaintiffs come, and, for replication to the amended plea second above pleaded by said defendant, say, that they ought not, by reason of any thing therein alleged, to be barred from having and maintaining their action aforesaid, because they say that the said plea, and the matters and things therein alleged and set forth, are not sufficient in law to bar their said action. Wherefore, they demur to the said plea, and pray judgment. R. KING, *Att'y for Pl'ffs.*

Defendant's joinder in demurrer.

And afterwards, to wit, on the ninth day of October, A. D. 1845, the aforesaid Henry Baldwin filed in the superior court of Cincinnati aforesaid his joinder in demurrer, closed in the words and figures following, to wit:

Superior court of Cincinnati.

HENRY BALDWIN
ads.
JACOB STRADER and others.

And the said defendant comes and says, that the said amended plea, secondly above pleaded—says the said plea so pleaded is sufficient in law to bar and preclude the said plaintiffs from having and maintaining their said action against him, the said defendant; and this he is ready to verify as the court may direct. Wherefore, inasmuch as the said plaintiffs have not answered the said plea, the said defendant prays judgment, and that the said plaintiffs may be barred from having and maintaining their aforesaid action thereof against him, the said defendant.

FOX & LINCOLN, *Att'ys for Defd't.*

Demurrer to 1st replication to 2d plea.

And afterwards, to wit, on the tenth day of October, A. D. 1845, the said Henry Baldwin, by his attorney, filed in the superior court of Cincinnati aforesaid, his demurrer to plaintiffs' first replication to second plea, closed in the words and figures following, to wit:

Superior court.

HENRY BALDWIN
ads.
JACOB STRADER et als.

And the said plaintiffs say, that the matters set forth in the plaintiffs' first replication to defendant's second plea, in manner and form as the same are there set forth, are not sufficient in law to enable the said plaintiffs to sustain their said action, and this he is ready to verify; wherefore, he prays judgment, &c.

And for cause of demurrer, the defendant shows said plaintiffs have not set forth any facts, showing how or in what way the fiduciary relation was created, nor any facts showing the existence of any fiduciary relation between the said President, Directors, and Company of the Commercial Bank of Cincinnati; also because said plaintiffs have set up new facts, and concluded to the country, instead of a verification.

FOX & LINCOLN, *Att'ys for def't.*

Joinder in demurrer to 1st replication.

And afterwards, to wit, on the 10th day of October, A. D. 1845, the said Jacob Strader and others, trustees of the Commercial Bank of Cincinnati aforesaid, filed in the superior court of Cincinnati aforesaid their joinder in demurrer, closed in the words and figures following, to wit:

October term, 1845. No. 348. Superior court.

The TRUSTEES of the Commercial Bank of Cincinnati,
vs.
HENRY BALDWIN.

Joinder in demurrer.

And the said plaintiffs now come, and for joinder in demurrer of said defendant to their first replication say, that their said replication is sufficient in law to sustain their action aforesaid; wherefore, they pray judgment and their damages.

R. KING, *for pl'ffs.*

Replication to amended pleas.

And afterwards, to wit, on the twenty-ninth day of October, A. D. 1845, the said Jacob Strader and others, trustees of the Commercial Bank of Cincinnati aforesaid, filed in the superior court of Cincinnati aforesaid their replication to amended pleas, closed in the words and figures following, to wit:

Superior court of Cincinnati. In assumpsit.

STRADER & OTHERS, trustees of the Commercial Bank of Cincinnati,
vs.
HENRY BALDWIN.

STATE OF OHIO, *Hamilton county, sct:*

And the said plaintiffs, for amended replication to the said amended pleas of said defendant, secondly and thirdly by them above pleaded, say, that they, the said plaintiffs, ought not, by reason of any thing by the said defendant therein alleged, to be barred from having and maintaining their action aforesaid against the said defendant; because, they say, that the said indebtedness referred to in their declaration aforesaid, and claimed to be due to them from said defendant, was contracted by him, the said defendant, as trustee of and for the said the President, Directors, & Company of the Commercial Bank of Cincinnati, by and through whom these plaintiffs claim as their lawful successors, as in their said declaration set forth; and of this they put themselves upon the country; and the said defendant doth the like.

And the said plaintiffs, for a further amended replication, filed by leave of court first had and obtained, to said defendant's amended pleas secondly and thirdly by him above pleaded, say, that they ought not, by reason of any thing by the said defendant therein alleged, to be barred from having and maintaining their action aforesaid against the said defendant; because, they say, that heretofore, to wit, on the twentieth day of June, in the year of our Lord 1835, to wit, at the county of Hamilton aforesaid, the said defendant, Henry Baldwin, was appointed by the President, Directors, and Company of the Commercial Bank of Cincinnati aforesaid, clerk of the said bank, at and for an annual salary, to wit, of dollars, then and there agreed upon by and between him, the said defendant, and them, the said president, directors, and company, to be paid to the said defendant. And the said defendant then and there accepted the said appointment, and entered upon and undertook the same expressly as a trust; and as such undertook and promised well and faithfully to fulfil the same, and all the

trusts that should by them, the said president, directors, and company, be reposed in him, the said defendant, in his said appointment. And it thereby then and there became, and was, the duty of said defendant, among other duties, to keep in a book, styled the individual leger, a full, true, complete, and perfect cash account, of and with each and every individual dealing with said bank; and from time to time, and always, to advise the paying teller for the time being of said bank, whose duty it was to pay checks or orders duly drawn upon said bank, in paying or rejecting checks or orders presented at said bank for payment. And the said defendant, then and there availing himself of his said capacity and control, combined and confederated with the paying teller then being of the said bank, to wit, one Thomas Burley, and falsified the account of the said Burley on the said individual leger, so that the said Burley was, by the said combining and confederating of him and the said defendant, enabled to draw out of the moneys of said bank the sum of two thousand dollars and upwards, more than was justly and truly due to him, the said Burley, upon his account. And checks drawn by him, the said defendant, upon the said bank, to the amount of ten thousand dollars and upwards, more than was justly and truly due to him, the said defendant, upon his account, even then and there paid out of the moneys of said bank, by them, the said defendant and the said Burley, so combining and confederating together, he, the said defendant, then and there falsifying his, the said defendant's, account upon the said individual leger, so as to conceal the said payments, so made, of his and the said Burley's checks upon said bank from the officers of said bank; which payments constitute the indebtedness referred to in plaintiffs' declaration aforesaid. And so the said plaintiffs say, that the said indebtedness referred to in their said declaration, and claimed to be due to them from the said defendant, was contracted by him, the said defendant, while acting in a fiduciary capacity under and in relation to the said President, Directors, and Company of the Commercial Bank of Cincinnati, by and through whom these plaintiffs claim as their lawful successors, as in their said declaration set forth; and this the said plaintiffs are ready to verify when and where this court shall direct. Wherefore, they pray judgment and their damages as aforesaid, with their costs.

RUFUS KING, *Att'y for pl'ffs.*

And afterwards, to wit, on the 6th day of November, A. D. 1845, the defendant, Henry Baldwin, by his attorneys, filed in the superior court of Cincinnati aforesaid his demurrer to plaintiffs' replication to the 2d and 3d plea, closed in the words and figures following, to wit:

Demurrer to replication to 2d and 3d plea.

STRADER and others }
vs. }
HENRY BALDWIN. }

Superior court of Cincinnati.

And the said defendant comes, and for rejoinder to the said first and

second amended replications of said plaintiffs to the amended second and third plea pleaded, says, that by reason of any thing in those replications alleged the said plaintiffs ought not to have and sustain their said action, because, he says, the matters set forth in said replication are not sufficient in law to enable the said plaintiffs to have and sustain their said action against him, and therefore he, the said defendant, doth demur to the same. And for cause of demurrer the said defendant shows to the court that said second amended replication is multifarious, and combines and sets forth matters having no necessary connection with each other; also, because said second replication alleges that this defendant falsified the account of Thomas Burley, without showing in what particular the account was falsified; also, because the said second replication charges the defendant with falsifying his own account upon the individual leger of the President, Directors, and Co. of the [Commercial] Bank of Cincinnati, without showing in what way or manner said account was falsified; also, because the said plaintiffs allege in their said second replication that it was the duty of defendant to keep the individual leger, and to keep a full and true account of and with each and every individual dealing with said bank, and from time to time to advise the paying teller for the time being of said bank, whose duty it was to pay checks or orders drawn on the bank, without stating or setting forth any allegation that the paying teller ever requested advice in any such accounts. FOX & LINCOLN, *Att'ys.*

Joinder in demurrer to amended replication.

And afterwards, to wit, on the eighth day of November, A. D. 1845, the said plaintiffs, Jacob Strader and others, trustees of the Commercial Bank of Cincinnati aforesaid, filed in the superior court of Cincinnati aforesaid their joinder in demurrer to amended replication, closed in the words and figures following, to wit:

Superior court of Cincinnati, October term, 1845.

STRADER and others, trustees of the Commercial Bank of Cincinnati,
vs.
HENRY BALDWIN.

And the said plaintiffs, for joinder in said defendant's demurrer to their first and second amended replication to the second and third amended pleas pleaded by said defendants, say, that their said replication is sufficient in law to enable them, the said plaintiffs, to have and sustain their action aforesaid against him, the said defendant. Wherefore, they pray judgment and their damages aforesaid, with their costs.

R. KING, *Att'y for pl'ffs.*

And afterwards, to wit, on the eighteenth day of March, A. D. 1847, there was isued from the supreme court of the State of Ohio, within and for the county of Hamilton, a citation and notice to the defendant, closed in the words and figures following, to wit:

Citation.

STATE OF OHIO, *Hamilton county, sct:*

To the sheriff of said county, greeting:

We command you to give notice to Henry Baldwin, that Jacob Strader, Robert Buchanan, John McCormick, John R. Coram, Joseph Smith, James Johnson, and George C. Miller, trustees of the Commercial Bank of Cincinnati, have filed their præcipe for a writ of error upon a judgment rendered in a certain action of assumpsit, lately pending before the judge of the superior court of Cincinnati, in and for the said county of Hamilton, and wherein the said Jacob Strader, Robert Buchanan, John McCormick, John R. Coram, Joseph Smith, James Johnson, and George C. Miller, trustees of the Commercial Bank of Cincinnati, *was* plaintiff, and the said Henry Baldwin was defendant; and also to cite the said Henry Baldwin to appear before the judges of the supreme court, at the court-house in said county, on the first day of the next term of said Supreme Court, to show cause, if any there be, why the said judgment should not be reversed, and why justice should not be done to the parties in that behalf. And of this writ make legal service and due return.

Witness Isaac G. Burnet, clerk of our said supreme court, at Cincinnati, this 18th day of March, A. D. 1847.

[L. S.]

ISAAC G. BURNET, *Clerk.*
By L. F. MOSHER, *Dep'y.*

Return.

Which citation was afterwards returned to the said supreme court, endorsed in the words and figures following, to wit:

I acknowledge service of this writ for defendant.

14 April, 1847. CHARLES FOX.

1847, April 14th. Service acknowledged for H. Baldwin, by C. Fox, his attorney.

T. J. WEAVER, *Sh'ff.*
C. J. W. SMITH, *Dep'y.*

Assignment of errors.

And afterwards, to wit, on the 7th day of May, in the year eighteen hundred and forty-seven, the said plaintiffs, Jacob Strader, John McCormick, Robert Buchanan, John R. Coram, Joseph Smith, James Johnson, and George C. Miller, trustees of the Commercial Bank of Cincinnati, filed in the supreme court of the State of Ohio in and for the county of Hamilton, their assignment of errors, closed in the words and figures following, to wit:

Supreme court, May term, 1847.

STRADER and als., trustees of the Commercial Bank of Cincinnati,
vs.
HENRY BALDWIN.

And the said Jacob Strader, John McCormick, Robert Buchanan,

John R. Coram, Joseph Smith, James Johnson, and George C. Miller, trustees of the Commercial Bank of Cincinnati, now come and say, that in the record and proceedings aforesaid there is error, in this, to wit:

1st. That the court erred in setting aside the judgment by default rendered in favor of said trustees against said Baldwin, and permitting said Baldwin to file a plea of bankruptcy.

2d. That the court erred in giving judgment for said defendant Baldwin upon his said demurrer to plaintiffs' replication, filed 2d September, 1844, when it ought to have been given in favor of the said plaintiffs.

3d. That judgment was given in favor of the said defendant Baldwin on his demurrer last filed by him to plaintiffs' amended replications, when it ought to have been given in favor of said plaintiffs.

4th. That there are other errors manifest upon the said record and proceedings to the injury of said plaintiffs.

Wherefore, the said plaintiffs pray that said judgment may be reversed, and that they may be restored to all things which he has lost by reason thereof.

By R. KING, *their attorney.*

Joinder in errors.

And afterwards, to wit, on the 10th day of May, A. D. 1847, the defendant, Henry Baldwin, filed in the supreme court of the State of Ohio, within and for the county of Hamilton aforesaid, his joinder in errors, closed in the words and figures following, to wit:

Ham. county supreme court.

HENRY BALDWIN
ads.
JACOB STRADER et als.

And the said defendant comes, and for plea says, there is no error in said record appearing.

CHARLES FOX, *Attorney.*

And now here, to wit, at the May term of our said supreme court, anno domini eighteen hundred and forty-seven, come the aforesaid parties by their attorneys aforesaid, and this cause comes on for hearing, and judgment is entered in the words and figures following, to wit:

Error to supreme court.

JACOB STRADER, Robert Buchanan, John McCormick, John R. Coram, Joseph Smith, James Johnson, and George C. Miller, trustees of the Commercial Bank of Cincinnati,
vs.
HENRY BALDWIN.

This cause came on for hearing on errors assigned, and was argued by counsel, and the court are of the opinion there is no error in the

judgment and proceedings in the record set forth. It is therefore ordered, adjudged, and decreed, that said judgment be and the same is hereby confirmed, and that the defendant recover of the plaintiffs his costs and charges by him about his suit in this behalf expended, and that this cause be remanded to the superior court for execution.

Whereupon, at the request of the plaintiffs, the said supreme court grant the following certificate, which is signed and filed, and ordered to be made a part of the record, to wit:

Error to superior court of Cincinnati.

JACOB STRADER, Robert Buchanan, John McCormick, John R. Coram, Joseph Smith, James Johnson, and Geo. C. Miller, trustees of the Commercial Bank of Cincinnati.

vs.

HENRY BALDWIN.

In this cause the judgment of the superior court of Cincinnati having been affirmed, it is now certified that this is the highest court of law of the State of Ohio in which a decision in this suit could be had, and that there is drawn a question in this suit, the construction of a clause in the first section of the statute of the United States, entitled an act to establish a uniform system of bankruptcy throughout the United States, approved 19th August, 1841, to wit, the following clause: "All persons whatsoever, &c., &c., owing debts which shall not have been created in consequence of a defalcation as a public officer, or as executor, administrator, guardian, or trustee, or in any other fiduciary capacity, who shall by petition, &c., &c." And that the decision of this court is against the title, right, privilege, or exemption specially set up and claimed by the plaintiffs under said clause in said statute; and this certificate is ordered to be made part of the record in this suit.

N. C. READ, P. HITCHCOCK,
Judges of the supreme court of the State of Ohio.

STATE OF OHIO,
Hamilton county, ss:

I, Isaac G. Burnet, clerk of the supreme court of the State of Ohio, within and for the county of Hamilton aforesaid, do hereby certify, that the above and foregoing is a true and correct copy of the record of proceedings had in the above stated case at the May term, A. D. 1847, of the said supreme court, as by reference to the records of said court, volume 29, page 166, will more fully appear.

In testimony whereof I have hereunto set my hand and affixed the seal of our said supreme court at Cincinnati, this twentieth day of July, anno domini 1847. [SEAL.]

ISAAC G. BURNET, *Clerk.*
Pr. S. G. BURNET, *Deputy.*